

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

)	
)	
FRIENDS OF CORAL BAY, ELEANOR)	
GIBNEY, DAVID GROVE, and RICHARD)	
SULLIVAN,)	Civil No. 2007-20
)	
Plaintiffs,)	
)	
v.)	
)	
RELIANCE HOUSING SERVICES, LLC,)	
RELIANCE-CALABASH BOOM ASSOCIATES,)	
LLP, RELIANCE-CALABASH BOOM, LLC,)	
and RELIANCE HOUSING FOUNDATION,)	
INC.,)	
)	
Defendants.)	
)	
)	

Attorneys:

Alan Smith, Esq,
St. Thomas, U.S.V.I.
For the plaintiffs,

Treston Moore, Esq.
St. Thomas, U.S.V.I.
For the defendants.

ORDER

Before the Court is the motion of defendants, Reliance Housing Foundation, Inc. ("Foundation"), Reliance Housing Services, LLC ("Services"), Reliance-Calabash Boom Associates,

LLLP ("Associates"), and Reliance-Calabash Boom, LLC ("Calash Boom LLC")(collectively, the "defendants") to dismiss the amended complaint for failure to state a claim upon which relief can be granted.

The Court decides motions for failure to state a claim upon which relief can be granted in accordance with Federal Rule Civil of Procedure 12(b)6). All material allegations are taken as admitted, all facts are construed in a light most favorable to the non-moving party, and all reasonable inferences are drawn for the non-moving party's benefit. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Alston v. Parker*, 363 F.3d 229, 223 (3d Cir. 2004). The Court will grant the motion only if no set of facts in support of claims pled would entitle the non-moving party to relief. *Morse v. Lower Marion School District*, 132 F.3d 902, 906 (3d Cir. 1997).

On January 19, 2007, the Friends of Coral Bay, Eleanor Gibney, David Grove and Richard Sullivan (collectively, the "plaintiffs") filed an amended complaint. The amended complaint lists Services, Associates, Calabash-Boom LLC and Foundation in the caption as defendants. However, the amended complaint defines "Reliance" to include only Services and Associates. (Compl. ¶ 2). The three claims in the amended complaint allege

that "Reliance" violated several laws. The claims are silent as to Calabash-Boom, LLC, and Foundation. With the exception of the caption and introductory paragraphs describing the legal structure and residence of all the named defendants, Calabash-Boom LLC and Foundation are not mentioned in the amended complaint. When the Court expressed concern about the sufficiency of the pleading and inquired about the plaintiffs' desire to amend the complaint, the plaintiffs elected to proceed on their complaint as filed.¹

Accordingly, because the amended complaint does not allege Calabash-Boom LLC or Foundation committed any act or omission for which the Court could grant relief,

It is hereby **ORDERED** that the defendants motion to dismiss the amended complaint is **GRANTED** in part;

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"Counsel: The counts refer to 'Reliance' that term was defined in a quotation parenthetical earlier in the document. As you might expect, consistent with all the other writing that we have done on this [including] our statement that [the named defendants] are all acting in concert, what the parenthetical should have done is included all four defendants, but because of an oversight it only included two.

...

The Court: Wouldn't your relief now be to seek leave to amend your complaint, if you say it is a typo?

Counsel: Well, your honor, I do not think it is necessary. ... [W]e are operating in an environment of notice pleading, we have named the defendants."

(Prelim. Inj. H'rg, February 27, 2007).

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It is further **ORDERED** that the complaint as against the
defendants, Calabash-Boom LLC and Foundation is **DISMISSED**.

Entered this 28th day of February, 2007

Curtis V. Gómez
Chief Judge

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Courtesy Copy:

Hon. Geoffrey W. Barnard, USMJ
Alan Smith, Esq.
Treston Moore, Esq.
Carol C. Jackson
Claudette Donovan
Lydia Trotman
Olga Schneider